United Nations ST/IC/2014/26

Secretariat

15 October 2014

Information circular*

To: Members of the staff

From: The Under-Secretary-General for Management

Subject: **Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 July 2013 to 30 June 2014**

1. The purpose of the present circular[1] is to continue to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under article X of the Staff Regulations of the United Nations, and to implement paragraph 17 of resolution 59/287, in which the General Assembly requested the Secretary-General to ensure that all staff of the Organization are informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard for the protection of the privacy of the staff members concerned. This circular covers the period from 1 July 2013 to 30 June 2014.

2. A broad overview of the administrative machinery in disciplinary matters is provided in section I below. Section II contains a summary of the cases in which one or more disciplinary measures were imposed by the Secretary-General on Secretariat staff members during the reporting period. Section III provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

I. Overview of the administrative machinery with respect to disciplinary matters

A. Legislative framework governing the conduct of staff members

3. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

* The present circular is in effect until further notice.

[1] Previous circulars covering the period from January 2000 to June 2013 were issued as ST/IC/2002/25, ST/IC/2004/28, ST/IC/2005/51, ST/IC/2006/48, ST/IC/2007/47, ST/IC/2008/41, ST/IC/2009/30, ST/IC/2010/26, ST/IC/2011/20, ST/IC/2012/19 and ST/IC/2013/29.

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4. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 1.2 for specific instances of expected and prohibited conduct.

B. Misconduct

5. Staff regulation 10.1 (a) provides that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". In addition, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. The administrative instruction on revised disciplinary measures and procedures (ST/AI/371 and Amend.1), provides further examples of conduct for which disciplinary measures may be imposed. A new administrative instruction on investigations and the disciplinary process continues to be under preparation and remains the subject of ongoing discussion and consultation among management and other stakeholders.

C. Procedural fairness

6. When a head of office or a responsible officer believes, following an investigation, that misconduct may have occurred, he or she refers the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case. Depending on the subject matter and complexity of the report of misconduct, the investigation may have been undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of a head of office.

7. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the staff member is notified in writing of the allegations of misconduct and is informed about the opportunity to comment on the allegations and the right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance or from outside counsel at his or her own expense. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. In light of the comments provided by the staff member, the Assistant Secretary-General for Human Resources Management decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides, on behalf of the Secretary-General,

whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a).

8. Staff rule 10.4 (a) provides that, at any time pending an investigation until the completion of the disciplinary process, a staff member may be placed on administrative leave by the appropriate official.

9. In accordance with staff rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application to the United Nations Dispute Tribunal challenging the imposition of the measure in accordance with chapter XI of the Staff Rules.

D. Disciplinary measures

10. Staff rule 10.2 (a) provides that disciplinary measures may take one or more of the following forms (i.e., more than one measure may be imposed in each case):

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

11. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances. In addition, in accordance with staff rule 10.3 (b), disciplinary measures imposed on a staff member must be proportionate to the nature and gravity of the misconduct involved.

E. Other measures

12. Written or oral reprimands, recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands, such as warnings or letters of caution, are administrative and/or managerial measures that are important for upholding standards of proper conduct and promoting accountability. In addition, when conduct that may amount to misconduct has an impact on performance, the issue may be addressed in the context of performance management. This may include training, counselling, the withholding of salary increments, the non-renewal of contract or the termination of appointment.

II. Summary of cases in which the Secretary-General imposed disciplinary measures during the period from 1 July 2013 to 30 June 2014

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and any disciplinary measures imposed by the Secretary-General. The functional title of the staff members or other particulars relating thereto are provided only when they played a role as aggravating or mitigating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

14. As noted above, both aggravating and mitigating factors are taken into account in determining a sanction, and these will vary according to the unique facts and circumstances of a case. Examples of possible aggravating factors are the repetition of acts of misconduct, the intent to derive personal benefit and the degree of harm resulting from the misconduct. Examples of possible mitigating factors are sincere remorse, a staff member's personal circumstances and voluntary disclosure of the acts of misconduct.

15. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case, or when a staff member provides a satisfactory explanation in response to the formal allegations of misconduct, the case is closed. Cases may also be closed when a staff member retires or otherwise separates from the Organization before an investigation or the disciplinary process is concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the former staff member's official status file so that the matter can be further considered if and when the staff member rejoins the Organization.

A. Abuse of authority, harassment and discrimination

16. A staff member engaged in a pattern of verbal abuse and ridicule towards a colleague over a number of years and attempted to physically assault the same staff member on one occasion. The staff member's admission and apology to the victim were seen as mitigating factors.

Disposition: written censure, loss of five steps in grade and deferment for two years of eligibility for consideration for promotion.

17. A staff member, who was the head of a regional office, harassed staff members and interns under the staff member's supervision by engaging in a pattern of conduct that included shouting or intimidating actions.

Disposition: demotion with deferment for one year of eligibility for consideration for promotion.

B. Theft and misappropriation

18. Two staff members attempted to take, without authorization, four drums of calcium hypochlorite belonging to the Organization. In doing so, the staff members also misused a vehicle belonging to the Organization.

Disposition: dismissals.

19. A staff member removed, without authorization, the new tyres of a vehicle belonging to the Organization, which was used as an ambulance, and replaced them with old tyres. There were mitigating circumstances, including that the staff member had returned the new tyres to the Organization, cooperated with the investigation and admitted the misconduct.

Disposition: separation from service with compensation in lieu of notice and without termination indemnity.

20. A staff member took, without authorization, a laptop computer that belonged to a visitor to the Organization. The fact that the staff member's conduct exposed the Organization to the risk of damage to its reputation was an aggravating factor in this case, as was the staff member's involvement of another unwitting staff member, which exposed the latter to being implicated in the wrongdoing. The laptop was eventually returned to the visitor.

Disposition: separation from service with compensation in lieu of notice and without termination indemnity.

21. A staff member took, without authorization, a United Nations vehicle. There were mitigating circumstances, including that the vehicle was recovered by the United Nations and the staff member eventually admitted the conduct.

Disposition: separation from service with compensation in lieu of notice and without termination indemnity.

22. A staff member received and used a United Nations vehicle without authorization. There were mitigating circumstances, including that the vehicle was recovered and the staff member eventually admitted the conduct.

Disposition: separation from service with compensation in lieu of notice and without termination indemnity.

23. A staff member who served as a warehouse assistant took, without authorization, six containers of paint that belonged to the Organization. The facts that the staff member had prepared a falsified gate pass and had initially given a false statement to investigators and the fact that the staff member's actions were fundamentally inconsistent with duties with which the staff member was entrusted were considered as aggravating factors.

Disposition: dismissal.

24. A staff member took, without authorization, money obtained by cashing cheques collected at the behest of two other staff members and issued to them by the Organization as advances. The staff member used the money for the staff member's own purposes. The Organization recovered the amount from the staff members to whom the cheques had been issued. The staff member who had cashed the cheques without authorization reimbursed the staff members from whom the cheques had

been taken. The fact that the staff member had demonstrated a pattern of deliberate deceit and had taken advantage of the trust that was placed in that staff member by the others were considered as aggravating factors.

Disposition: dismissal.

25. A staff member performing the functions of a driver siphoned fuel from a United Nations-assigned vehicle without authorization and sold the fuel to a third party. There were mitigating circumstances, including the staff member's cooperation with the investigation and admission to misconduct and the length of time taken to resolve the case. The fact that the staff member had abused the position of driver and had repeatedly engaged in the same misconduct since the commencement of employment with the Organization were considered as aggravating circumstances.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

26. A staff member who served as a driver and warehouse assistant took, without authorization, three air-conditioning units that belonged to the Organization and used a United Nations vehicle illicitly to deliver the units to a private residence. The units were eventually recovered. The neglect of the staff member's duties, which included a particular duty of care towards the assets of the Organization, was considered as an aggravating factor.

Disposition: dismissal.

27. A staff member took, without authorization, a United Nations car battery, intending to use it for private purposes. There were mitigating factors, including an early admission and an expression of remorse. The battery was recovered.

Disposition: separation from service with compensation in lieu of notice and without termination indemnity.

C. Misrepresentation and false certification

28. A staff member withdrew, for personal use, money from a United Nations-related bank account, in 2008 and 2009, when in a position of trust. There were significant mitigating factors, namely that the staff member had reported the misconduct voluntarily before the discovery that the money was missing. The staff member's conduct was initially addressed informally, following which the staff member, among other actions, reimbursed the full amount taken. The fact that a number of years had passed between the misconduct being committed and the imposition of a disciplinary measure was also considered as a mitigating factor.

Disposition: demotion with deferment for a period of three years of eligibility for consideration of promotion.

29. A staff member submitted documents containing inaccurate information to the Organization in support of a request for funding to attend a training course. Mitigating considerations included that the staff member had fully cooperated with the investigation, offering an early and complete admission of the conduct; had shown remorse and apologized for the conduct; and had demonstrated a long-standing commitment to volunteer service on social issues within and outside of the

Organization. The staff member's request for funding was not approved, resulting in no financial loss to the Organization.

Disposition: demotion by one grade with deferment for three years of eligibility for consideration for promotion.

30. A staff member submitted, and received payment for, multiple health insurance claims to an insurance company that was contracted through the Organization. The claims were based on documentation that inflated the staff member's actual expenditures. Following requests by the insurance company, the staff member reimbursed the company for the full amount of the payments made. The length of satisfactory service (approximately 20 years), the length of time taken to complete the investigation and the fact that the staff member had reimbursed the insurance company for the amounts paid were taken into account as mitigating factors.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

31. A staff member submitted a travel request and mission report relating to a meeting that had not taken place. The staff member also submitted e-mail messages to the investigators purporting to confirm that the meeting had taken place, when the staff member knew the messages contained false information. The staff member's excellent performance record was taken into account as a mitigating factor.

Disposition: separation from service with compensation in lieu of notice and without termination indemnity.

32. Two staff members accepted money from a third party, in relation to that party's interest in purchasing United Nations vehicles, when it was not part of the staff members' official duties to receive such moneys. There were mitigating factors, notably the fact that the third party had withdrawn its complaint against the staff members, after formal allegations had been issued and the staff members appeared to have repaid the third party, at least in part.

Disposition: separations with compensation in lieu of notice and without termination indemnities.

D. Misuse of United Nations property or assets

33. A staff member dealing with the movement of goods in a mission environment attempted, without authorization, to ship a potentially dangerous item on a United Nations aircraft on behalf of another staff member (see para. 34 below) without following any of the safety or screening procedures for the shipment of such an item and placed a passenger luggage tag on the cargo in the knowledge that it was not passenger luggage. Mitigating circumstances included the length of time taken to dispose of the case and the staff member's full cooperation with the investigation and early admission of and apology for the staff member's actions. Aggravating circumstances were that the actions directly resulted in a potentially dangerous item being loaded onto a passenger flight and that, at the time, the staff member had enjoyed unrestricted access to the mission's air terminal and United Nations aircraft by virtue of the staff member's functions.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

34. A staff member requested the assistance of another staff member in shipping potentially dangerous cargo on a United Nations flight for unofficial reasons (see para. 33 above). The length of time taken to dispose of the case was a mitigating circumstance.

Disposition: written censure and a loss of two steps in grade with deferment for a period of two years of eligibility for salary increment.

35. A staff member drove a United Nations vehicle without authorization and at an excessive speed. There were mitigating factors, including the delay in referring the case for disciplinary action.

Disposition: written censure with deferment for one year of eligibility for salary increment.

36. A staff member drove a United Nations vehicle without authorization. The length of time taken to resolve the case was a mitigating circumstance.

Disposition: written censure.

37. A staff member arranged to have personal items flown as cargo on a United Nations flight without authorization.

Disposition: written censure.

38. A staff member drove a United Nations vehicle without a valid movement-of-personnel form and without security clearance. The length of time taken from the initiation of the investigation to the completion of the disciplinary process was taken into account as a mitigating factor.

Disposition: written censure.

E. Misuse of information and communications technology resources

39. A staff member accessed, without authorization, the official e-mail accounts of other United Nations staff members; transmitted, without authorization, an e-mail from the webmail account of another United Nations staff member to various colleagues, which was critical of another staff member; and personally submitted a reference letter to the United Nations, in connection with the staff member's recruitment, while making it appear as though the reference had been submitted by a third party.

Disposition: dismissal.

40. A staff member misused the Organization's resources by indicating that long-distance calls were for official purposes when in fact they were personal calls. The full cost attributable to the relevant calls was recovered. Mitigating factors present included that the staff member admitted the conduct and was cooperative throughout the investigation.

Disposition: written censure and a fine of two months' net base salary.

F. Sexual exploitation and abuse

41. A staff member had sexual intercourse with a minor.

Disposition: dismissal.

42. A staff member had sexual intercourse with a minor on a number of occasions.

Disposition: dismissal.

43. A staff member had sexual intercourse with two minors.

Disposition: dismissal.

G. Unauthorized outside activities and conflict of interest

44. A staff member engaged in outside activities related to the operation of a business while employed by the United Nations and without having obtained the approval of the Secretary-General. There were mitigating circumstances, including that the business was in existence before the staff member's joining the Organization and was wound up shortly after commencement of service with the Organization.

Disposition: written censure and a loss of step in grade.

H. Assault

45. A staff member repeatedly threatened to kill another staff member and hit the staff member, causing injury to the face and hand.

Disposition: dismissal.

46. A staff member physically assaulted a United Nations Police Adviser on two occasions on the same day. The fact that the Police Adviser had directed insulting and abusive language towards the staff member was a mitigating circumstance in the case.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

47. A staff member who performed the functions of a security guard physically assaulted the staff member's supervisor during an argument concerning a work assignment. There were mitigating factors, including the delay in referring the case for disciplinary action.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

I. Financial disclosure

48. A General Service staff member failed to comply with the financial disclosure obligations.

Disposition: written censure.

49. A senior staff member failed to comply with the financial disclosure obligations.

Disposition: written censure and a fine of two months' net base salary.

50. A senior staff member failed to comply with the financial disclosure obligations.

Disposition: written censure and a fine of two months' net base salary.

J. Failure to honour private obligations

51. A staff member failed to honour private legal obligations to two schools and a bank. The magnitude of the debts, the time period over which the staff member was requested by the Organization to take appropriate action and the involvement of a national Government were considered as aggravating factors.

Disposition: written censure with deferment for a period of one year of eligibility for consideration for promotion.

III. Possible criminal behaviour

52. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. During the reporting period, 11 cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States.